

1 MCGREGOR W. SCOTT
United States Attorney
2 DAVID T. SHELLDY
Assistant United States Attorney
3 501 I Street, Suite 10-100
Sacramento, CA 95814
4 Telephone: (916) 554-2702
Facsimile: (916) 554-2900

5 RONALD J. TENPAS
Assistant Attorney General
6 BARCLAY T. SAMFORD (NMBN 12323)
Trial Attorney
7 U.S. Department of Justice
Environment & Natural Resources Div.
8 1961 Stout St. 8th Floor
9 Denver, CO 80294
Email: clay.samford@usdoj.gov
10 Telephone: (303) 844-1475
Facsimile: (303) 844-1350

11 Attorneys for Defendants

12 UNITED STATES DISTRICT COURT
13 EASTERN DISTRICT OF CALIFORNIA
14 SACRAMENTO DIVISION

15 SIERRA CLUB, INC. and SIERRA NEVADA
FOREST PROTECTION CAMPAIGN,

16 Plaintiffs,

17 v.

18 DALE BOSWORTH, in his official capacity as
Chief of the U.S. Forest Service; JOHN BERRY,
19 in his official capacity as Forest Supervisor of the
Eldorado National Forest; UNITED STATES
20 FOREST SERVICE, an agency of the U.S.
Department of Agriculture; ANN VENEMAN,
21 in her official capacity as Secretary of the U.S.
Department of Agriculture; and UNITED STATES
22 DEPARTMENT OF AGRICULTURE,

23 Defendants.

Case No. Civ. S-04-2114 GEB DAD

**STIPULATION ON
ATTORNEYS' FEES AND COSTS**

1 Plaintiffs and Defendants, by their undersigned attorneys, hereby stipulate as follows:

2 1. The Forest Service agrees to settle the claims for costs and attorneys' fees of
3 plaintiff Sierra Nevada Forest Protection Campaign in the above captioned litigation for one
4 hundred thirty-five thousand dollars (\$135,000.00). The parties agree that plaintiff Sierra Club is
5 not eligible for attorneys fees as a plaintiff under the Equal Access to Justice Act ("EAJA"), 28
6 U.S.C. § 2412(d); provided, however, that Sierra Club attorneys may be reimbursed for legal
7 services rendered to EAJA-eligible parties.

8 2. Payment, as identified in Paragraph 1 above, shall be accomplished by the Forest
9 Service using an electronic fund transfer into the Sierra Club Environmental Law Program Client
10 Trust Account Fund. Plaintiff's attorneys shall provide the appropriate account number and any
11 other information needed to make payment to the undersigned counsel for Defendants.
12 Defendants shall submit the paperwork for payment within twenty (20) business days after this
13 stipulation is entered by the Court or Plaintiff provides the necessary information as required to
14 facilitate the payment, whichever is later. Plaintiff's attorneys shall notify the Defendants'
15 attorneys when payment is received.

16 3. Plaintiff agrees to accept payment of \$135,000.00 in full satisfaction of any and
17 all claims for attorneys' fees and costs, under EAJA and/or any other statute and/or common law
18 theory, incurred by Plaintiff related to the above-captioned litigation.

19 4. Plaintiff's attorney is receiving funds in trust for Plaintiff, and Plaintiff agrees to
20 this procedure. Plaintiffs and their attorneys agree to hold harmless Defendant in any litigation,
21 further suit, or claim arising from the deposit of the agreed-upon \$135,000.00 settlement amount
22 into the Client Trust Account identified in Paragraph 2.

23 5. This Agreement is the result of compromise and settlement, is based on and
24 limited solely to the facts involved in this case. It has no precedential value and shall not be
25 construed as an admission of liability by Defendants, nor be cited in any other litigation except as
26 necessary to enforce the terms of the stipulation. Defendants do not waive any defenses they may
27 have concerning the claims settled under this Agreement. No provision of this Agreement shall
28

1 be interpreted as or constitute a commitment or requirement that Defendants obligate or pay
2 funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable
3 appropriations law.

4 6. The undersigned representatives of the Parties certify that they are fully authorized
5 by the respective Parties whom they represent to enter into the terms and conditions of this
6 Stipulated Agreement and to legally bind such Parties to it.

7 7. Nothing in the terms of this Stipulation shall be construed to limit or deny the
8 power of a federal official to promulgate or amend regulations.

9 8. This Stipulation represents the entirety of the Parties' commitments with regard to
10 settlement. The terms of this agreement shall become effective upon approval by the Court of
11 this Stipulation.

12 IT IS HEREBY AGREED.

13 Respectfully submitted this 11th day of December, 2008.

14
15 RONALD J. TENPAS
Assistant Attorney General
Environment & Natural Resources Division

16
17 /s/ Barclay Samford
BARCLAY SAMFORD
Trial Attorney
Natural Resources Section
Environment & Natural Resources Division
18 U.S. Department of Justice
19 1961 Stout Street - 8th Floor
20 Denver, CO 80294

21 Attorney for Defendants

22
23 /s/ Eric Huber
ERIC HUBER
SIERRA CLUB
24 2260 Baseline Road, Suite 105
25 Boulder, CO 80302

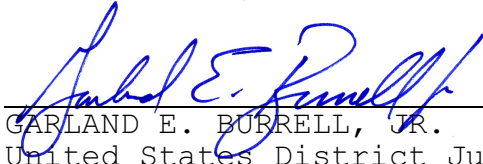
26 /s/ Kristin Henry
KRISTIN HENRY
PAT GALLAGHER
27 SIERRA CLUB
28 85 Second Street, 2nd Floor

San Francisco, CA 94105

Attorneys for Plaintiffs

PURSUANT TO STIPULATION, it is so ORDERED.

Dated: December 11, 2008


GARLAND E. BURRELL, JR.
United States District Judge